

# **Guidelines for Implementing the Executive Order 13103 on Computer Software Piracy**

**Federal CIO Council  
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# **Guidelines for Implementing the Executive Order on Computer Software Piracy**

*These Guidelines are issued by the CIO Council pursuant to the Executive Order on Computer Software Piracy (Executive Order 13103 – September 30, 1998). The Order requires the Council to provide advice and make recommendations to executive agencies and to the Office of Management and Budget on appropriate government-wide measures to carry out the Order. In developing these Guidelines, the Council has attempted to balance each agency's obligation to comply with the directives of the Order against the need for flexibility in developing agency practices and procedures. Accordingly, the Guidelines suggest general best practices that promote legal use of software without imposing rigid requirements to achieve this goal.*

*Note: A software management toolkit with model policies and training materials will be published separately to assist agencies with implementation of the Executive Order.*

## **I. INTRODUCTION**

### **A. Background**

As the nation's largest consumer of software, the U.S. Government has an essential role to play in setting an example for the nation as a lawful user of computer software. Computer software is protected by Federal copyright law, which requires users of a particular software program to have a license authorizing such use. To provide guidance to Federal agencies in fulfilling this role, President Clinton issued the Executive Order on Computer Software Piracy (Executive Order 13103 – September 30, 1998) (Order), which seeks to:

- Ensure that executive agencies of the U.S. Government acquire, reproduce, distribute, transmit, and use computer software in compliance with international treaty obligations and federal law, including the Copyright Act;
- Ensure that executive agencies maintain only legal software on their computers and computer networks; and
- Ensure that Government contractors and recipients of grants and other Federal funding do not use such funds to acquire, create, operate or maintain computer software in violation of applicable copyright laws.

## B. Summary of Executive Order Requirements

President Clinton signed the Executive Order on Computer Software Piracy on September 30, 1998. The Order sets forth the Government's policy against the use, acquisition, reproduction, distribution, and transmission of computer software that violates applicable copyright laws. To implement this policy, the Order *directs* each executive agency to:

- Adopt procedures to ensure that the agency does not acquire, reproduce, distribute, or transmit computer software in violation of applicable copyright laws;
- Establish procedures to ensure that the agency has present on its computers and uses only computer software not in violation of applicable copyright laws. These procedures *may* include:
  - preparing agency inventories of the software present on its computers;
  - determining what computer software the agency has authorization to use; and
  - developing and maintaining adequate record keeping systems.
- Take appropriate measures, including for example the use of certifications or written assurances, in the event the agency becomes aware that contractors or recipients of Federal financial assistance are using Federal funds to acquire, operate, or maintain computer software in violation of copyright laws and determines that such actions may affect the integrity of the agency's contracting and Federal financial assistance processes;
- Cooperate fully in implementing the Order and share information that may be useful in combating the use of computer software in violation of applicable copyright laws;
- Educate appropriate agency personnel regarding software copyrights and the policies and procedures adopted by the agency to honor them; and
- Ensure that the policies, procedures, and practices of the agency related to copyrights protecting computer software are adequate and fully implement the policies set forth in the Order.

The Executive Order also directs the Office of Management and Budget to use its oversight mechanisms to foster compliance with the Order.

## II. RECOMMENDED SOFTWARE MANAGEMENT PRACTICES

Each Federal agency should consider these or similar steps to ensure agency compliance with the Order:

**A. Assign Responsibilities**

1. Assign to the Chief Information Officer (CIO) overall responsibility for developing and implementing a plan to ensure agency compliance with the Order utilizing resources from throughout the organization. The CIO should look to these Guidelines as a resource in developing such a plan. Other partner organizations within the agency may be needed to properly implement this Executive Order. For example, the CIO may wish to partner with the agency's Inspector General to conduct the initial assessment described below in paragraph B; the Procurement Executive to develop and implement the software management policies referenced in paragraph C; and Human Resources to develop and implement the training program referenced in paragraph D. The CIO may delegate specific tasks to appropriate personnel within the agency, provided that he or she exercises sufficient supervision to ensure that such tasks are completed in a satisfactory manner.
2. Direct your CIO to develop performance measures to assess the agency's compliance with the Order.

**B. Initial Assessment.** The CIO should coordinate through qualified personnel or an outside contractor an initial assessment of the agency's existing policies and practices with respect to the use and management of computer software. The purpose of the assessment is to help the agency evaluate its current state of compliance with the Order and to identify any additional measures needed to achieve compliance. The assessment may vary from agency to agency. However, each agency should, at a minimum, review whether existing policies and procedures promote legal software use and proper software management (as described below in paragraph 1). In addition, each agency should, to the extent feasible, establish the initial software baseline described in paragraph 2, particularly if agency policies and procedures with respect to software use and management are found to be deficient in any respect:

1. Review and identify deficiencies in existing policies and procedures, including procedures for acquiring and installing software, storage and disposition of software and licenses, and software training.
2. Establish an initial baseline of the agency's software (including copies installed on individual computers and accessed through agency networks) to assess whether the agency's software usage complies with applicable software licenses. The agency may use a sampling approach to assess its existing software management policies and practices. Upon completion of the initial baseline, any unauthorized

copies of software should be (i) properly licensed or (ii) destroyed and replaced with licensed copies.

**C. Software Management Policy.** Develop a software management policy on the acquisition and use of software by the agency and its employees.

1. Adopt a policy prohibiting the use or installation of software by agency employees for which the agency lacks appropriate licenses (unless such software is properly licensed to the employee and used in accordance with agency policy).
2. Adopt a software acquisition policy to guard against the acquisition of counterfeit software or software that violates licensing restrictions. The software acquisition policy should, among other things, require the following procedures:
  - a) Educate employees authorized to acquire software on the Agency's acquisition procedures.
  - b) To the extent feasible and consistent with agency acquisition procedures, standardize the agency's policy of acquisition of software.
  - c) Obtain from software resellers (i) proper licenses for any software supplied to the agency, or (ii) other information from which the agency can determine that its use of such software is validly licensed by the copyright holder.
  - d) Purchase software from reputable resellers.
3. To the extent feasible and consistent with agency acquisition procedures, adopt software installation and distribution procedures to ensure that software: (i) originates from the office(s) designated by the agency to acquire new software; (ii) is approved by those office(s); or (iii) meets Agency IT architecture and standards requirements.
4. Establish and maintain a record keeping system for documentation and materials evidencing legal use of the agency's software, including, for example, original software licenses, certificates of authenticity, purchase invoices, and copy of completed registration card. Consider the use of software management computer programs to automate such record keeping. If feasible, store such records, as well as any original software media (e.g., CD-ROMs or diskettes), in secure, designated location(s) within the agency.
5. Include in the agency's software management policy provisions concerning the downloading of software from the Internet by agency employees, the use of user-owned software on agency computers, the

use of agency-owned software from home or remote computers, and the decommissioning of agency computers. Ensure that such uses of software comply with applicable licenses and agency policy.

6. Include in the agency's software management policy information concerning the authorities to whom employees can direct questions about the policy and report possible violations of the policy.
7. Develop and adopt procedures for monitoring compliance with the software management policy, addressing reports and incidents of alleged violations of the policy, and disciplining employees who knowingly violate the policy or Federal copyright laws.

**D. Training.** Develop a training program for existing and new employees.

1. Existing Employees

- a) Amend employee handbook to include the agency's software management policy, and distribute the updated handbook to all employees.
- b) Provide training on the agency's software management policy for existing employees to inform them of the types of software piracy, how to detect and prevent piracy, how to implement the software use policy, and consequences of violating the policy. Such training may be conducted as a separate seminar or as a part of existing training programs.
- c) Circulate reminders of the agency's software management policy on a regular basis (at least annually) or remind employees of the policy in other ways (at least annually), for example, through notices in agency newsletters.
- d) Inform employees where they can get additional information on the agency's software management policy and software piracy prevention.

2. New Employees

- a) Provide each new employee an employee handbook that includes the agency's software management policy.
- b) Train new employees during their initial agency orientation on how to comply with the agency's software management policy.

- E. Periodic Inspections and Assessments.** Develop a system (possibly in conjunction with the IG or other agency assessment tool) for periodic and random inspections and assessments to evaluate the effectiveness of the software management policy. (A tool kit of helpful practices is to be published separately to assist agencies with implementation).

### **III. OTHER REQUIREMENTS**

**Software Use by Government Contractors and Recipients of Federal Funds.**

The Executive Order requires government contractors and recipients of Federal grants and loans to have “appropriate systems and controls in place to ensure that Federal funds are not used to acquire, operate, or maintain computer software in violation of applicable copyright laws.” If an agency becomes aware that contractors or recipients are using Federal funds to acquire, operate, or maintain unlicensed software and determine that such actions may affect the integrity of the agency's contracting and financial assistance processes, the agency is required to “take such measures, including the use of certifications or written assurances, as the agency head deems appropriate and consistent with the requirements of law.”

***NOTE: Guidance will be issued separately with respect to these requirements of the Executive Order.***